

IP 03-0149-CR 1 T/F USA v Barringer [2]
Magistrate Kennard P. Foster

Signed on 3/23/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
ALBERT BARRINGER,)
)
Defendant.)

Cause No. IP 03-149-CR (T/F)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 03-149-CR (T/F)
)	
ALBERT BARRINGER,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable John Daniel Tinder, Judge, on March 14, 2006, designating this Magistrate Judge to conduct a hearing on the Petitions for Summons or Warrant for Offender Under Supervision filed with the Court on March 14, 2006, and to submit to Judge Tinder proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). Proceedings were held March 16, 2006 and March 23, 2006, in accordance with Title 18 U.S.C. §3583 and Rule 32.1 of the *Federal Rules of Criminal Procedure*. At all proceedings, Mr. Barringer appeared in person and with his appointed counsel, William Dazey; the government appeared by Tim Morrison, Assistant United States Attorney; and Mike Kendall, U. S. Parole and Probation officer, appeared and participated in the proceedings.

On March 16, 2006, the Court conducted the following procedures in accordance with Rule 32.1(a)(1) of the *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That William Dazey, the Indiana Federal Community Defender's Office, was appointed to represent Mr. Barringer in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Barringer and his counsel who informed the Court that they had read and understood the specifications of violations and waived further reading thereof.

3. Mr. Barringer was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. Mr. Barringer was advised he would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. Mr. Barringer was advised he had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Barringer had violated an alleged condition or conditions of his supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Tinder's designation entered March 14, 2006.

7. Mr. Dazey stated that Mr. Barringer would stipulate there is a basis in fact to hold him on the specifications of violation of supervised release set forth in the Petition. Mr. Barringer executed a written waiver of the preliminary hearing, which was accepted by the Court.

8. The parties agreed to continue further proceedings until March 23, 2006. The proceedings were then adjourned pending the revocation hearing on March 23, 2006. The defendant was detained, pending further proceedings.

On March 23, 2006, the Court reviewed prior proceedings held March 16, 2006, including the defendant's right to a preliminary hearing. Mr. Barringer appeared in person with his court-appointed counsel, William Dazey. The government appeared by Tim Morrison, Assistant United States Attorney; and Mike Kendall, U. S. Parole and Probation officer, appeared and participated in the proceedings. The following proceedings occurred:

1. Mr. Barringer, by counsel, stipulated that he committed specifications of violations set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed with the Court on March 14, 2006 as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>"The defendant shall participate in a program of mental health treatment as directed by the probation officer".</p> <p>On March 14, 2005 <i>[sic]</i>, staff at the Volunteers of America informed this officer that Mr. Barringer was refusing to attend mental health counseling. This officer then met with the offender in person at the Volunteers of America and attempted to persuade him to cooperate with the Court order. Mr. Barringer became very angry and refused to discuss the issue any further, accusing this officer of threatening him.</p>
2	<p>"The defendant shall reside for a period of up to 6 months at a Community Corrections Center as directed by the probation officer and observe the rules of that facility".</p> <p>On March 14, 2006, while this officer was attempting to discuss the mental health issue with Mr. Barringer, he became extremely angry and damaged two doors at the facility before leaving the building without permission. The Indianapolis Police were called and Mr. Barringer was apprehended approximately 4 blocks away at University Park across from the U.S. Courthouse.</p>

The parties stipulated the following in open Court:

(1) Mr. Barringer and the government agreed they were ready to proceed to disposition on the pending Petition to revoke supervised release in open Court this date.

(2) Mr. Barringer admitted he committed the violations of specifications set forth in the Petition to Revoke Supervised Release stated above.

(3) Mr. Barringer has a relevant criminal history category of III. *See*, U.S.S.G. §7B1.4(a).

(4) The most serious grade of violation committed by Mr. Barringer constitutes a Grade C violation, pursuant to U.S.S.G. §7B1.1(b).

(5) Pursuant to U.S.S.G. §7B1.4(a), upon revocation of supervised release the range of imprisonment applicable to Mr. Barringer is 5-11 months, plus any unserved community corrections term.

(6) The parties agreed that, upon release from confinement, Mr. Barringer will not be subject to supervised release. The parties disagreed as to the appropriate disposition of the case. They agreed that they would both present evidence and/or argument on that issue to the Court.

The Magistrate Judge informed the defendant and the parties' respective counsel that the Magistrate Judge would accept the parties' stipulations.

2. The Court then placed Mr. Barringer under oath and inquired directly of him whether he admitted committing the violations of supervised release contained in the Petition. Mr. Barringer admitted the violations.

The Court, having heard the admissions of the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant, Albert Barringer, violated the above-delineated conditions in the Petition.

Mr. Barringer's supervised release is therefore **REVOKED** and he is sentenced to the custody of the Attorney General or his designee for a period of 5 months, with no supervised release

to follow. The service of the sentence shall begin immediately. The Magistrate Judge recommends Mr. Barringer be designated to the U. S. Medical Center for Federal Prisons at Springfield, Missouri for the purpose that medical and mental health care providers reassess defendant's mental condition and for treatment, if necessary.

The Magistrate Judge requests that Mike Kendall, U. S. Parole and Probation Officer, prepare for submission to the Honorable John Daniel Tinder, District Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

Counsel for the parties and Mr. Barringer stipulated in open Court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72.b, *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U. S. District Court for the Southern District of Indiana*.

You are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge pursuant to Title 28, U.S.C. §636(b)(1)(B) and (C) and Rule 72(b) of the *Federal Rules of Civil Procedure*. You shall have within ten days after being served a copy of this Report and Recommendation to serve and file written objections to the proposed findings of facts and conclusions of law and recommendations of this Magistrate Judge. If written objections to the Magistrate Judge's proposed findings of fact and recommendations are made, the District Judge will make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which an objection is made.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation revoking Mr. Barringer's supervised release and imposing a sentence of imprisonment of 5 months in the custody of the Attorney General or his designee. It is recommended that Mr. Barringer be designated by the U. S. Medical Center for Federal Prisons in Springfield, Missouri. Further, that upon Mr. Barringer's release from confinement, he will not be subject to a term of supervised release.

IT IS SO RECOMMENDED this 23rd day of March, 2006.

Kennard P. Foster, Magistrate Judge
United States District Court

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